

## **REMARKS**

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the remarks which follow.

As noted in the Office Action Summary, claims 1-19 are pending. Applicants note with appreciation that claims 17-19 are allowed.

Claims 1, 5, 7, 10, 11, 12, 13, and 14 are amended herein. The specification is amended herein to recite the specific address of the biological depository as well as the date of deposit. Basis for these amendments may be found throughout the specification and claims as-filed, especially at page 5, line 12 and claims 2 and 4. No prohibited new matter is presented herein. Claims 2 and 4 are canceled herein without prejudice or disclaimer thereto.

Applicants reserve the right to file a continuation application directed to any subject matter canceled herein.

### ***Rejections Under 35 U.S.C. § 112, second paragraph***

Claims 1, 7, 8-12, 14, and 15 stand rejected under 35 U.S.C. § 112, second paragraph as purportedly indefinite.

Claim 1 stands rejected for the phrase "foreign to its natural genetic inheritance". Claim 1 is amended herein to recite "which is not a natural elements of the genome".

Claims 7 and 10 stand rejected for the recitation "and it conserves the ability". Claims 7 and 10 are amended herein, as suggested by the Examiner, to recite "and wherein the strain conserves the ability..."

Claims 7 and 8 stand rejected as the phrase "[T]he *Xanthomonas* strain as claimed in claim 1" purportedly lacks antecedent basis. As claim 1 has been amended herein to recite the *Xanthomonas* strain, Applicants submit this rejection is moot.

Claims 11 and 12 are amended herein to recite "conserves the ability to produce exopolysaccharide", as requested by the Examiner.

Claim 14 is rejected as purportedly failing to recite a method step. Claim 14 is amended herein to recite a method step and to remove the term "use".

Claims 9, 15, and 16 stand rejected as dependent on rejected base claims 1, 7, and 8. As the rejections of these base claims are addressed above, Applicants submit the rejections of claims 9, 15, and 16 are moot.

***Rejections Under 35 U.S.C. § 112, first paragraph***

Claims 1-6, 8, 9, 13 and 16 stand rejected under 35 U.S.C. § 112, first paragraph as purportedly failing to comply with the written description requirement. The Office asserts that Applicants are not in possession of all claimed phytopathogenic bacterial strains that have been made nonphytopathogenic by deletion or alteration of just any, non-specified, virulence gene with or without the addition of DNA foreign to the strain's genome.

In order to expedite prosecution and without acquiescing in the rejection, independent claim 1 is amended herein to recite a phytopathogenic strains that have been made nonphytopathogenic by the inactivation of the *hrp* or *hrc* gene groups. By way of support, Applicants refer to the Examples on pages 14-28 of the specification which include discussion of how to inactivate a *hrp* or *hrc* gene group.

In light of these amendments and remarks, Applicants respectfully request that the rejection be withdrawn.

Claims 1-6, 8, 9, 13 and 16 stand rejected under 35 U.S.C. § 112, first paragraph as purportedly not enabled by the specification. The Office asserts that undue experimentation would be required to practice the present invention and that the guidance provided by the specification is limited to inactivation of *hrp* and *hrc* genes in *Xanthomonas campestris*.

To this end, independent claim 1 is amended herein to recite the elements of claims 2 and 4, *i.e.*, to recite strains of *Xanthomonas* that have lost their phytopathogenic nature by inactivation of at least one virulence gene of the *hrp* or *hrc* group, and Applicants submit that the *hrp* and *hrc* gene groups are in fact highly conserved in *Xanthomonas*. In support of the argument that the claims are supported fully by the specification as well as what is known in the art, by way of explanation Applicants refer to "Characterization of *Xanthomonas axonopodis* pv *glycines* Hrp Pathogenicity Island", Kim et al., Journal of Bacteriology, May 2003, pages 3155-3166. Specifically, Applicants refer to page 3158, second column, 3159, Table 2, second paragraph and page 3163, first paragraph. Kim et al. discuss the high conservation of *hrp* and *hrc* in *Xanthomonas*.

#### Deposit of Biological Material

Applicants submit that RPA-BIOCAT 1016, 1017, 1019, 1021 and 1022 were deposited under Budapest Treaty on June 16, 1999 at Centraalbureau Voor Schimmelcultures (CBS), Oosterstaat 1, P.O. Box 273, 3740 AG Baarn, The

Netherlands, an acceptable depository as listed in M.P.E.P. § 2405. Pages 12-13 of the specification are amended herein to recite the complete name and address of the biological depository, as well as the date of deposit. Applicants submit this amendment does not set forth new matter, as it is required by 37 C.F.R. §§ 1.801 to 1.809, and the depository and the cell lines at issue are already listed in the specification as-filed on pages 12-13.

Also enclosed are the following forms pursuant to the Budapest Treaty: BP/4 (Receipt in the case of an original deposit) and BP/9 (Viability Statement). These forms show that on June 16, 1999, the required cultures were deposited at the Centraalbureau Voor Schimmelcultures (CBS).

Finally, attached hereto is a Declaration stating that the deposit will be made available to the public in accordance with the regulations set forth at 37 C.F.R. § 1.806, and that Applicants acknowledge their duty to remove all restrictions on the dissemination of the deposited cell line upon the issue of a patent arising from the present application.

In light of the above remarks, Applicants request that the rejections under 35 U.S.C. § 112, first paragraph, be withdrawn.

**CONCLUSION**

From the foregoing, further and favorable action in the form of a Notice of Allowance is respectfully requested and such action is earnestly solicited.

In the event that there are any questions concerning this amendment or the application in general, the Examiner is respectfully requested to telephone the undersigned so that prosecution of the application may be expedited.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: January 4, 2005

By: \_\_\_\_\_

  
Deborah H. Yellin

Registration No. 45,904

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620